HAND BOOK

BANK OFFICERS

HAND-BOOK

FOR

BANK OFFICERS.

BY

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"Hand-Book for National-Bank Shareholders."

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PREFACE.

IN preparing this (the third) edition of this work, some important additions have been made, the chief of which are the two new chapters on the powers and duties of the President and Cashier, respectively.

Though treating specially of the law and practice governing National banks, the volume, as it now stands, will be found valuable and useful to the officers of any commercial bank, for the reason that the National banking system embodies the very best features of commercial banking, as is conclusively shown by the wonderful success, growth and strength attained by it in a period of about twenty-five years.

Perhaps the best proof of the merit of the work is the fact that it has reached a third edition in sixteen month's time, a result largely owing to the commendation kindly expressed by some of the most prominent and successful bankers in all sections of the country.

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Additional Reserve Cities.

On page 3 of this volume it is stated that there are nineteen reserve cities, and on page 4 a list of these cities is given. To this list should now be added the names of three more which have recently become reserve cities—making a total of twenty-two (22) reserve cities at present (December, 1890).

The following is a list of the three cities referred to and the dates upon which they were approved by the Comptroller:

Minneapolis, Minn.,	approved	July 5, 1890.
St. Paul,	"	July 8, 1890.
Brooklyn, N. Y.	"	July 14, 1890.

Lawful Money.

To the list of various forms of lawful money on page 6 should now be added U. S. Treasury Notes issued under act July 14, 1890, which are also available for lawful money reserve.

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PART ONE

CHAPTER I.

LAWFUL-MONEY RESERVE.

Legal Requirements.

The "reserve" of a bank is that proportion of its "deposits" or liabilities payable on demand, which it is required, by law, "at all times" to "have on hand in lawful money of the United States."

The law bearing on the subject is to be found in sections 5191, 5192, and 5195, United States Revised Statutes, chapter 4, National-bank Act; in sections 2 and 3 of the act of June 20, 1874; and in sections 1 and 2 of the act of March 3, 1887. All of these will be found in the "National-bank

Act," edition of 1888, compiled under direction of the Comptroller of the Currency.

The cash resources which the law requires a bank to lay aside at all times in this way constitute the sheet-anchor of safety in stormy financial weather, and as a matter of policy alone, apart from other considerations, too great stress can not be laid upon the importance of a faithful and uniform compliance with the law in this particular, in spirit as well as in letter.

Striking proof that this view of the subject is held and practiced by bank managers as a body is found in the fact that although the law requires National banks located outside of reserve cities (over 2,800 in number) to maintain a reserve of 15 per cent. only, their reports show that these banks habitually carry a reserve equal to an average on the whole of *over 28 per cent.* (See page 195, Comptroller's Report for 1888.)

That the framers of the law evidently realized the importance of this feature also, is apparent from the fact that the law prescribes for habitual violations of the statute, in this particular, the summary and severe penalty applying in only a few other places, viz., the appointment of a receiver to wind up the bank's affairs. (See section 5191.)

Required on Deposits only.

Attention is here called to the fact that previous to the passage of the act of June 20, 1874, the law required National banks to maintain a reserve on their "circulation" outstanding as well as on their "deposits," but this requirement was repealed by the act named, and since then a reserve has been required on "deposits" only. The act of 1874 also provided that each bank should keep on deposit with the Treasurer of the United States an amount of lawful money equal to 5 per cent. of its "circulation," for the redemption of which at the United States Treasury this act provides, but the bank was at the same time permitted to count this "5 per cent. redemption fund" as a part of its reserve on "deposits."

List of Reserve Cities.

There are at present nineteen "reserve cities," as per list given below, sixteen of which were designated in section 5191, while three others, viz.: Kansas City, Mo., St. Joseph, Mo., and Omaha, Nebr., have been recently added under the operation of the act of March 3, 1887.

Chicago and St. Louis, which had been "reserve cities" previously, became "central reserve cities" under the provisions of the act of March 3, 1887.

See note on page facing first page.

Central Reserve Cities:

New York City, N. Y.
Chicago, Ill. St. Louis, Mo.

Reserve Cities:

Albany, N. Y.	Milwaukee, Wis.
Baltimore, Md.	New Orleans, La.
Boston, Mass.	Washington, D. C.
Cincinnati, Ohio.	Omaha, Nebr.
Cleveland, Ohio.	Philadelphia, Pa.
Detroit, Mich.	Pittsburgh, Pa.
Kansas City, Mo.	San Francisco, Cal.
Louisville, Ky.	St. Joseph, Mo.

Classification of Banks with regard to Percentage of Reserve required.

It will be found, from the portions of the law quoted, that in the matter of reserve requirements the National banks are divided into three distinct classes, according to location, viz.:

1. Those located in the three "central reserve cities," which are required to maintain a reserve equal to 25 per cent. of their "deposits," and to keep the entire amount on hand *in bank*.

2. Those located in the sixteen other "reserve cities," which must also maintain a reserve of 25 per cent. on "deposits," but are required to keep only *one-half* of same on hand *in bank*, while they may keep the remainder on deposit with any National bank, or banks, located in any of the "central reserve cities."

3. Those located outside of the nineteen "reserve cities," which are required to maintain a reserve of only 15 per cent. on "deposits," and to keep on hand *in bank* only *two-fifths*

See note on page facing first page.

of this, while the remainder may be kept on deposit with any National bank, or banks, located in any of the nineteen "reserve cities."

Of course, if any bank of the second or third class does not avail itself of the privilege of keeping a portion of its reserve with "reserve agents," it *must keep the entire required amount on hand in bank.*

It will be observed that while section 5192 included banks located in Richmond and Charleston among those privileged to act as "reserve agents" for the 15 per cent. banks, section 5191 did not impose upon them the necessity for keeping a reserve equal to 25 per cent. of their "deposits," as was required of banks located in the other cities named in section 5192, and for this reason the privilege of acting as "reserve agents" has never been accorded by the Comptroller's office to National banks in those two cities.

Various forms of Lawful Money available for Reserve.

As the law prescribes that the reserve of a bank must be in "lawful money of the United States," the term "lawful money" is defined as follows:

Previous to the resumption of specie payments, on the 1st of January, 1879, "lawful money" virtually meant United States "legal-tender" notes,

gold and silver coin being, until then, at a premium, and not in general circulation, but since then the term has embraced various forms of currency, which it is important for every bank to know, in order that it may intelligently carry out the requirements of the law in the matter of reserve. The following list of the various forms of "lawful money" available for reserve purposes existing at present is, therefore, given:

1. Gold coin of the United States.
2. "Standard" silver dollars of the United States.
3. Fractional silver coin of the United States.
4. Certificates for gold coin deposited with the Treasurer of the United States.
5. Certificates for silver dollars deposited with the Treasurer of the United States.
6. United States "legal-tender" notes.
7. Certificates for "legal-tender" notes deposited with the Treasurer of the United States.
8. Gold clearing-house certificates.

In order that reserve may readily be computed at any time, and that the information required for reports of condition (which are always called for past dates) may be fully and accurately stated, it is absolutely necessary that a daily and exact record of the amount of each kind of the various kinds of currency should be kept for this purpose. That this may be done, it will of course be necessary to

See note on page facing first page.

assort the cash on hand at close of business each day, and in doing this, National-bank currency should be separated from other forms of paper currency, and in case a bank has any notes of its own issue on hand, these should in turn be separated from those issued by other banks.

Deposits, and Sundry Items which are allowed to Offset Deposits.

The term "deposits," used in those portions of the law which bear on the subject of reserve, embraces not only all classes of what are known as "individual deposits" held by a bank, but deposits made by the United States Government and by its disbursing officers also.

Balances due *to* other National banks and to State and private banks and bankers, being, as a rule, payable on demand, have always been regarded as "deposits" also, and any bank holding these has been required to maintain a reserve upon such balances, balances due *from* other banks and bankers being allowed to "offset" the balances due *to* them; but when in any case the amount due *from* banks and bankers exceeds the amount due *to* them, such excess can not be applied in reduction of liability on other "deposits," and amounts due *from* and *to* banks and bankers are then excluded from both

sides of the calculation necessary for determining "deposits" and reserve required thereon.

The other items of a bank's "resources" which, under the various rulings of the Comptroller's office, are admitted to offset or reduce its liability on "deposits" are as follows:

1. "Exchanges for clearing-house," viz.: checks on other banks in same place, which are members of a clearing-house.
2. "Checks on other banks in same place."
3. "Bills of other National banks" held by the bank. Bills of the bank's own issue are, of course, not admitted to offset its liabilities on "deposits."

Reciprocal Accounts with Reserve Agents.

It is the custom with some banks to keep *reciprocal* accounts with their "reserve agents," and in such cases the question arises as to how these items should be treated.

As the law provides that a portion of a bank's "reserve may consist of balances due to" it "from associations approved by the Comptroller of the Currency," such items should, as a rule, be treated as follows in computing reserve:

1. If the *balance* of any such "reciprocal account" is an amount due *from* the "reserve agent" bank, such *balance* may be treated as available for reserve.
2. But, if such *balance* represents an amount due *to* the "reserve agent," then it should be regarded as "due *to* other National banks," and so treated.

Examples showing how Reserve should be computed in Ordinary Cases.

To clearly illustrate how the reserve of a bank should be computed in any ordinary case, two examples are given here; the first (Form A) of a bank which should have 25 per cent. on hand; the second (Form B) of a bank which should have 15 per cent. on hand. Each of these examples is computed on a form identical in every respect with the printed blanks now used in the Comptroller's office for this purpose.

The great advantage of this form consists in the fact that down to the point of finding the amount of "deposits" upon which reserve is to be maintained, the process is the same for *all banks regardless of location*. Beyond this point it is only necessary to apply the proper *proportion* required by each case (viz., 25 per cent. or 15 per cent.), and the proper *distribution* of the reserve *in bank* and *in hands of agents* required in such case.

In *exceptional* cases, which are defined and illustrated on pages 12 to 20, all that is needed is to extend the ordinary computation a little further by a very short and simple calculation. Concise rules for this calculation are given on page 12.

With a copy of this general printed form, and the few rules referred to, the computation of reserve in the case of *any* bank, under *any* circumstances, becomes an easy and simple matter.

Form A.—Calculation of the Lawful-Money Reserve of National Banks Located in Reserve Cities and Central Reserve Cities.

Items on Which Reserve is to be Computed.

LIABILITIES.			
Due to National Banks*	$235,866		
Due to State banks and bankers	25,559		
		$261,425	
LESS			
Due from other National banks	125,335		
Due from State banks and bankers	100,000		
		225,335	
			$36,090
Dividends unpaid			3,867
Individual deposits			2,857,628
United States deposits			705,000
Deposits of U. S. dis. officers			
Gross amount			$3,602,585
DEDUCTIONS ALLOWED.			
Exchanges for clearing-house	$107,950		
Checks on other banks in the same place	513		
National-bank notes	17,340		
			125,803
Twenty-five per cent. of this total amount ☞			$3,476,782
is the entire reserve required, which is			869,195
Deduct 5 % redemption fund with Treasurer U. S.			2,250
Net reserve to be held			$866,945

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

Items Composing Net Reserve and Distribution of Same.

One-half of the net reserve is*	$433,472	One-half of net reserve is	$433,473
		Items in bank's possession to make up the same, viz.:	
		Fractional silver	$29,885
		Silver dollars	1,090
		Silver Treas. cert.	22,060
		Gold coin	300,050
		Gold Treas. cert.	50,000
		Legal-ten'r notes	12,000
		U. S. cert. of deposit for legal-tenders	20,000
Balances with approved reserve agents amount to	440,067	Gold C. H. cert's	435,085
Excess with reserve agents	6,595	Excess in items held by the bank	$1,612

Form B.—Calculation of the Lawful-Money Reserve of National Banks Not Located in Reserve Cities or Central Reserve Cities.

Items on Which Reserve is to be Computed.

LIABILITIES.			
Due to National banks*	$82,946		
Due to State banks and bankers	16,735		
		$99,681	
LESS			
Due from other National banks	$25,043		
Due from State banks and bankers	5,695		
		30,738	
			$68,943
Dividends unpaid			621
Individual deposits			728,423
United States deposits			55,000
Deposits of U. S. dis. officers			36,098
Gross amount			$889,085
DEDUCTIONS ALLOWED.			
Exchanges for clearing-house			
Checks on other banks in the same place	$3,894		
National-bank notes	1,650		
			5,544
Fifteen per cent. of this amount ☞			$883,541
is the entire reserve required, which is			$132,531
Deduct 5 % redemption fund with Treasurer U. S.			1,125
Net reserve to be held			$131,406

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

Items Composing Net Reserve and Distribution of Same.

Three-fifths of the net reserve is*	$78,844	Two-fifths of net reserve is	$52,562
		Items in bank which may lawfully make up the same, viz.:	
		Fractional silver	$2,094
		Silver dollars	4,450
		Silver Treas. cert.	8,575
		Gold coin	51,896
		Gold Treas. Cert.	3,000
		Legal-ten'r notes	15,025
		U. S. cert. of deposit for legal-tenders	
Balances with approved reserve agents amount to	50,796	Gold C. H. cert's	85,040
Deficiency with reserve agents	$28,048	*Excess* in the two-fifths reserve held	$32,478

RECAPITULATION

Excess in the entire reserve held . . . $4,430

Exceptional Cases.

It sometimes happens that, while the "aggregate" reserve of a bank located outside of a "central reserve city" is more than sufficient, it has not a sufficient amount on hand *in bank;* in other words, it has more than is necessary in the hands of "reserve agents." In such a case, while the law does not permit such excess with "agents" to offset a deficiency in the reserve needed *in bank*, such "excess" may be regarded as "due from other banks," and, as such, applied in the same way to reduce liability on "deposits," with the result sometimes of so reducing the amount of reserve needed in bank as to show that the "lawful money" on hand is sufficient.

In order to find and apply the *exact* excess in the hands of "reserve agents" use the following:

Rules for finding Exact Excess with Reserve Agents and for applying it to Reduction of Liability on "Deposits."

From the amount *actually* in hands of "reserve agents," deduct the amount which by the ordinary method of computation it *seems* should be there; the remainder will be the "apparent excess."

I. In the case of a "reserve city" bank, add *one-seventh* of the "apparent excess" to such "apparent excess" and

their sum will be the "exact excess" which may be applied to reduction of liability on "deposits."

II. In the case of a 15 per cent. bank, add *nine-ninety-firsts* of the "apparent excess" to such "apparent excess," and their sum will be the "exact excess."

Having ascertained the "exact excess" in this way proceed to apply it to reduction of liability on "deposits" and to the consequent decrease of reserve *apparently* required to be *in bank* as follows:

I. Where the "exact excess" *equals* or *exceeds* the *balance* due *to* other banks and bankers, as shown by ordinary method of computation, the amount by which the reserve *apparently* required *in bank* may be decreased will be—

(*a*) In the case of a "reserve city" bank, *one-eighth* of the *balance* due *to* other banks and bankers.

(*b*) In the case of a 15 per cent. bank, *6 per cent.* of the *balance* due *to* other banks and bankers.

NOTE.—The reason for this is, that in such a case the treatment of the "excess" with "agents" as an amount due *from* banks and bankers causes the amount due *from* to offset the amount due *to* other banks and bankers and so eliminates the *balance* due *to* them from the computation, and therefore renders it unnecessary to provide for a reserve on such *balance*.

II. Where the "exact excess" is *less than* the *balance* due *to* other banks and bankers, the amount by which the reserve *apparently* required *in bank* may be decreased will be—

(*a*) In the case of a "reserve city" bank, *one-seventh* ($\frac{1}{7}$) of the "*apparent excess*."

(*b*) In the case of a 15 per cent. bank, *six-ninety-firsts* ($\frac{6}{91}$) of the "*apparent excess*."

As $\frac{6}{91}$ of any amount is a little less than *one-fifteenth* ($\frac{6}{90}$) of such amount, it will involve less labor to find $\frac{1}{15}$ of the "apparent excess" and this portion will be nearly enough correct, unless the "excess" is a large amount.

NOTE.—The reason for this is that in such a case the treatment of the "excess" with "agents" as an amount due *from* other banks has the effect of reducing the liability on the *balance* due *to* other banks, and therefore renders it unnecessary to provide for a "reserve" on the amount of such "excess."

To illustrate the application of these rules for "exceptional" cases, two examples are given: the first (Form A) illustrating the case of a 25 per cent. bank; the second (Form B) illustrating the case of a 15 per cent. bank, each of which has an amount with "agents" in excess of legal requirements.

NOTE.—In all computations for ascertaining reserve it should be distinctly understood that any *excess* in the hands of agents can not be counted as reserve for the reason that the law (Secs. 5192 and 5195) fixes a limit to the amount in the hands of agents which may so be counted, and any amount over and above the designated limit or proportion has not the legal status of reserve and can not so be regarded.

Form A.—Calculation of the Lawful-Money Reserve of National Banks Located in Reserve Cities and Central Reserve Cities.

Items on Which Reserve is to be Computed.

LIABILITIES.		
Due to National Banks*	$159,387	
Due to State banks and bankers	6,041	
		$165,428
LESS		
Due from other National banks	89,072	
Due from State banks and bankers	20,861	
		109,933
		$55,495
Dividends unpaid		5,488
Individual deposits		618,978
United States deposits		110,000
Deposits of U. S. dis. officers		. . .
Gross amount		$789,961
DEDUCTIONS ALLOWED.		
Exchanges for clearing-house	$80,696	
Checks on other banks in the same place	1,020	
National-bank notes	8,326	
		90,042
Twenty-five per cent. of this total amount ☞		$699,919
is the entire reserve required, which is		174,979
Deduct 5 % redemption fund with Treasurer U. S.		4,500
Net reserve to be held		$170,479

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

Items Composing the Net Reserve and Distribution of Same.

One-half of the net reserve is*	$85,239	One-half of net reserve is	$85,240
		Items in bank's possession to make up the same, viz.:	
		Fractional silver	$4,209
		Silver dollars	2,006
		Silver Treas. cert.	4,500
		Gold coin	41,695
		Gold Treas. cert.	12,050
Balances with approved reserve agents amount to	144,936	Legal-ten'r notes	14,280
			78,740
"Apparent excess" with reserve agents	$59,697	Apparent deficiency of reserve in bank	$6,500
To find "exact excess" add one-seventh of this =	8,528	As "exact excess" exceeds *balance* due banks ($55,495), take one-eighth of such *balance*	6,937
"Exact excess" with reserve agents is	$68,225	Showing actual excess of reserve in bank of	$437

RECAPITULATION.

Excess in the entire reserve held . . . $437.

Form B.—Calculation of the Lawful-Money Reserve of National Banks Not Located in Reserve Cities or Central Reserve Cities.

Items on Which Reserve is to be Computed.

LIABILITIES.

Due to National banks*	$39,873	
Due to State banks and bankers	4,261	
		$44,134
LESS		
Due from other National banks	$7,382	
Due from State banks and bankers	2,543	
	9,925	
		$34,209
Dividends unpaid		410
Individual deposits		241,444
United States deposits		110,000
Deposits of U. S. dis. officers		. . .
Gross amount		$386,063

*Should the aggregate "Due from" exceed the aggregate "Due to" banks, both items must be omitted from the calculation.

DEDUCTIONS ALLOWED.

Exchanges for clearing-house	. .	
Checks on other banks in the same place	$2,263	
National-bank notes	5,330	
		7,593
Fifteen per cent. of this amount is		$378,470
is the entire reserve required, which is		$56,770
Deduct 5 % redemption fund with Treasurer U. S.		2,250
Net reserve to be held		$54,520

Items Composing the Net Reserve and Distribution of Same.

Three-fifths of the net reserve is*	$32,712	Two-fifths of net reserve is	$21,808
		Items in bank which may lawfully make up the same, viz.:	
		Fractional silver	$2,012
		Silver dollars	540
		Silver Treas. cert.	3,165
		Gold coin	3,946
		Gold Treas. Cert.	2,780
Balances with approved reserve agents amount to	61,832	Legal-ten'r notes	8,000
			20,443
"Apparent excess" with reserve agents	$29,120	Apparent deficiency of reserve in bank	$1,365
To find "exact excess" add $\frac{6}{91}$ of this =	2,880	As "exact excess" is less than *balance* due banks ($34,209), take $\frac{6}{91}$ of "apparent excess"	1,920
Exact excess with reserve agents is	$32,000	Showing actual excess of	$555

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

RECAPITULATION

Excess in entire reserve held . . . . . $555.

CHAPTER II.

LAWFUL-MONEY RESERVE.

Explanation of Rules applying in Exceptional Cases.

As some readers will naturally wish to know the *reasons* for applying the rules for "exceptional" cases given in the preceding chapter, the following explanation in each of the two cases therein illustrated is given here.

Explanation of Case of 25 Per Cent. Reserve Bank.

It is evident, at a glance, that when the "apparent excess" of $59,697 is considered as "due from other banks," and is applied to reduction of liability on "deposits," it will have the effect of making a proportionate reduction in the amount of reserve required. The reserve allowed with "agents" being one-half of one-fourth, or *one-eighth* of the amount of "net deposits," the reduction here will be in the proportion of *one* dollar of reserve to every *eight* dollars applied in reduction of "deposits."

This being the established ratio, we know that the "additional excess" with "agents" must be *one-eighth* of the "exact excess" to be applied in reduction. We also know that this "exact excess"

will consist of the "apparent excess" ($59,697), *increased by* the "additional excess," and knowing so much, we can readily ascertain the amount of "additional excess."

To simplify the illustration, let us assume that X represents the unknown "additional excess," and, from what has just been stated, we obtain the following equation:

Eight times X is equal to $59,697 *increased by* X; or, taking the amount X from each side of the equation, seven times X is equal to $59,697, and dividing each side by seven we find that X, or the "additional" amount, is equal to $8,528; and that $68,225 (eight times X) is the exact amount that can be applied to reduction of liability on "deposits."

As this "exact excess" ($68,225) *exceeds* the *balance* due *to* banks and bankers ($55,495) it will have the effect of eliminating the latter item from the computation, and of converting the "apparent deficiency of reserve in bank" ($6,500) into an actual *excess* of $437 instead. (See Rule I, clause (*a*), page 13.)

As the "apparent excess" in this example was of itself greater than the *balance* due to banks,

it was not necessary to carry out the computation to find "exact excess," but this has been done simply to show how it should be done when circumstances require.

Explanation of Case of 15 Per Cent. Reserve Bank.

In the case of this 15 per cent. reserve bank, the excess with reserve agents can be applied in the same way to reduction of liability on "deposits," the *proportion*, of course, being changed.

With such a bank the law allows a portion of its reserve equal to 9 per cent. of net deposits to be kept with "agents;" therefore, the proportion that "reserve with agents" should bear to "deposits" is as 9 to 100.

Applying the same line of reasoning as in the case of the 25 per cent. bank, we find that the "apparent excess" is $29,120, and assuming that X represents the whole "excess" that can be applied, we know that 9 per cent. of X, or $\frac{9}{100}$ of X, will be the "additional" excess which can be released from its function as reserve and applied to reduction of liability, and also that the "exact excess" will be the "apparent excess" increased by this "additional excess."

We have, therefore, from this the following equation: X equals $29,120, *increased by 9 per cent. of X;* and, deducting 9 per cent. of X from each side of the equation, we have X less $\frac{9}{100}$ of X, or $\frac{91}{100}$ of X equals $29,120; and from this, $\frac{1}{100}$ of X, or 1 per cent. of X, equals $320; and 9 per cent. of X equals $2,880, which is the "additional" excess to be added to $29,120 to make $32,000, the "exact excess" which can be applied to reduction of liability.

As the ratio of "reserve in bank" to "deposits" is 6 per cent., when the "deposits" are reduced by $32,000; $1,920 less "reserve" will be needed *in bank.* But, $1,920 is just $\frac{6}{91}$ of $29,120, the "apparent excess," so that the amount by which the reserve *apparently* required *in bank* may be decreased will be $\frac{6}{91}$ of the "apparent excess" with agents. (See Rule II, clause (*b*), page 14.)

Simple Method of keeping the 5 Per Cent. Redemption Fund Account.

As it appears to be the custom with many banks to credit their circulation account with all of their notes, both "fit" and "unfit," which have been redeemed and returned by the United States Treasurer, and to charge this account with all amounts remitted to the Treasurer to reimburse their 5 per cent. fund, it is suggested that all such redemption

transactions should be entered in the 5 per cent. fund account on the books of the bank, and not in the circulation account, which should show a fixed balance, representing the circulation issued to the bank on its bonds, and should not be altered at any time, except to be increased by the amount of circulation issued to it on deposit of additional bonds, or to be decreased by the deposit of lawful money with the United States Treasurer for the purpose of reducing circulation and withdrawing bonds.

To illustrate how entries should be made in the 5 per cent. fund account, let us assume that the Treasurer has on deposit for the bank a fund of $2,250, and that he redeems for the bank $1,000 of its notes, of which $500 are "fit" and $500 are "unfit." Upon receipt of the $500 "fit" notes the bank should debit "Cash" and credit its 5 per cent. fund account, and make a similar entry when it receives the $500 incomplete currency from the Comptroller's office in replacement of the "unfit" redeemed by the Treasurer and destroyed. These entries would reduce the 5 per cent. fund account to $1,250 debit balance, and it would be restored to its proper amount, $2,250, when the bank remits $1,000 to reimburse its account with the Treasurer,

for then the account would be debited with $1,000, and "Cash" credited with the same amount.

This method of treatment would be very simple; the account would always exhibit the exact balance in hands of the Treasurer, and, in fact, would be practically the counterpart of the account as kept on the books of the Treasurer.

How to Compute Average Reserve.

In each report of condition a bank is required to state its *average* reserve on deposits for the preceding 30 days. To obtain this, take the percentage of reserve for each business day during the 30 days preceding date of report and add these percentages together. Divide the aggregate so obtained by the number of business days and the result will represent the average ratio desired. (See note, page 14, as to *excess* with reserve agents in computing reserve.)

Form of Application for Comptroller's Approval of Reserve Agent.

To the Comptroller of the Currency,
Washington, D. C.

Sir: Application is hereby made for your approval of the ——— National Bank ——— as an association with which a portion of the lawful money reserve of this bank may be kept in accordance with law.

Respectfully yours,

——— ———.

(To be signed by Cashier or other officer of bank making application.)

Note.—National banks in reserve cities may select any National bank or banks in any of the "central" reserve cities only. Those located outside of reserve cities may select any National bank or banks in any reserve city or cities "central" or other. All selections are subject to approval of the Comptroller.

PART TWO.

CHAPTER I.

ORGANIZATION OF NATIONAL BANKS.

The law relating to the organization of National banks is to be found in sections 5133, 5134, 5135, and 5136 United States Revised Statutes, National-bank Act.

It has not been deemed necessary to introduce into this little work all the details of information and printed forms pertaining to the organization of a National bank for the reason that a pamphlet containing all such information and forms, entitled "Instructions in regard to the Organization, Extension, and Management of National Banks," compiled in the year 1884, under direction of the Comptroller of the Currency, can be obtained free, upon application to his office, by any person desiring a copy, together with any further information on the subject which may not appear to be embraced in the pamphlet.

Minimum Capital Stock Required.

It may be well to state here that the *minimum* capital stock required of each National bank (see section 5138) is based upon the *population* of the place in which it is located, at date of its organization, as follows:

1. $50,000 for a bank organized in a place having 6,000 inhabitants, *or less*.

2. $100,000 for a bank organized in a city having *over* 6,000, but *not more than* 50,000 inhabitants.

3. $200,000 for a bank organized in a city having *over* 50,000 inhabitants.

Increase and Reduction of Capital Stock.

This pamphlet also contains the information and forms necessary to enable a bank to increase or reduce its capital stock as provided by sections 5142 and 5143, respectively.

Since the pamphlet was prepared, section 5142 has been amended by "Act approved May 1, 1886, (see page 75, National-bank Act, edition of 1888), section 1 of which provides that a National bank may "increase its capital stock in accordance with existing laws, to any sum approved by the said Comptroller, notwithstanding the limit fixed in its original articles of association and determined by said Comptroller."

Prior to the passage of this act, in 1886, the banks had been limited in any proposed increase of capital to the maximum of increase which was named and provided for in their articles of association at time of organization.

Extension of Charter.

The pamphlet also gives the forms and information necessary for procuring an extension of corporate existence beyond the limit fixed in the original charter granted at time of a bank's organization. The law on this subject is to be found in the act of July 12, 1882 (pages 68-73, National-bank Act, 1888), entitled "An act to enable National banking associations to extend their corporate existence, and for other purposes."

Minimum Bond Deposit Requirements.

Section 8 of the act just mentioned amended the law with regard to the amount of bonds to be deposited by banks already organized, or to be afterward organized, having a capital of $150,000, *or less*, to the effect that such banks should not be required to deposit United States bonds to any amount in excess of *one-fourth* of their capital stock.

The *minimum* bond deposit required of banks having capital *in excess of* $150,000 is uniformly $50,000. (See section 4, act of June 20, 1874.)

CHAPTER II.

QUALIFICATIONS, DUTIES, AND LIABILITIES OF DIRECTORS.

SEC. 5146. Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located for at least one year immediately preceding their election, and must be residents therein during their continuance in office. Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director. Any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

SEC. 5147. Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by this Title, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be immediately transmitted to the Comptroller of the Currency, and shall be filed and preserved in his office.

SEC. 5239. If the directors of any National banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.

General Information as to Duties.

The oath which every director of a National bank is required to take before he is qualified to act in that capacity requires him, among other things, to swear or affirm "that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title" (*i. e.*, the National-bank Act).

As a director receives no compensation for his services, the extent to which the duty of administering the affairs of the bank devolves on him is a matter which his own conscience must decide, for the law imposes a penalty on him only for such

violations of the law as he "knowingly" commits, or "knowingly" permits any of the employés to commit.

This being the case, it would not be a difficult matter for a director to avoid incurring any legal liability by habitually absenting himself from meetings of the board and from the bank, and generally keeping himself out of the way of information with regard to the bank's affairs, and the only incentive such a director would have to restrain him from pursuing this course would be his interest in $1,000 of stock in the bank, which every director is compelled by law to own in his own right.

Such instances as this are, no doubt, extremely rare, yet, at the same time, it is certain that in a measure the same bad results are attained through indifference and carelessness on the part of directors, arising from a wrong conception of their duty to the stockholders, whose interests they are presumed to represent, and also from their ignorance of the law governing the bank whose affairs they are chosen to administer.

Directors do not, perhaps, always realize to what extent the stockholders are compelled to rely upon them for seeing that the capital they invest is used

profitably and honestly, but, as a matter of fact, outside of such information as the officers may be disposed to furnish them, the only reliable data as to the bank's affairs accessible to stockholders are those furnished by the sworn reports of condition, which are published in the newspapers five times a year.

When this responsibility to stockholders is fully realized, it would seem that a prudent and conscientious man of business would hesitate to act as director, unless he intended to inform himself as to his duties, and, having done this, to "diligently and honestly administer the affairs of the bank."

Such a director will inquire how he may most readily, and without too much research, acquire such reliable information as will enable him to discharge his duties intelligently; and partly with a view to furnishing in concise form and plain terms some of the information needed this little work has been prepared, embracing only such subjects as most commonly present themselves to bank officers in the regular current of business.

The construction of law and rules of practice here given are those which at present seem to obtain in the Comptroller of the Currency's office as

the outcome of information and experience accumulated during a quarter of a century, from intimate and constant official intercourse with the banks, supplemented by careful examination of all legal decisions bearing on their operations. In this connection it is suggested that in all cases of doubt as to a proper construction of law, or as to correct and sound practice, directors or other bank officers should promptly apply for information to the Comptroller's office, as in doing so they obtain the benefit of a large experience gained in dealing with the affairs of over 3,300 banks.

How Directors should be Chosen.

The law relating to this subject is contained in sections 5145, 5148, and 5149, and is so explicit as to leave but little room for misunderstanding. Great care should be taken, however, to see that all the details therein prescribed are carried out with precision, as the failure to do this in any one particular might, under certain circumstances, permit the raising of some question as to the validity of acts performed by the directors capable of being decided by the courts adversely to the interests of such directors, or of the stockholders whom they represent.

Scope of Powers conferred upon Directors; Specific Duties.

Paragraphs 6 and 7, section 5136 (see page 9, National-bank Act, edition 1888), contain a summary of the general powers conferred by statute upon the directors of a National bank, and prescribe how some of these powers may be delegated by them to the officers whom they appoint.

Section 5145 (see page 13, National-bank Act, 1888), in prescribing that "the affairs of each association shall be managed by not less than five directors," clearly contemplates that its affairs should receive the constant and personal supervision of the board as a whole, or where this is not practicable, that it should be accomplished through committees selected from their number charged with special duties in this respect.

The scrutiny of all loans and discounts made is a matter which should always receive the particular attention of the board as a whole, or of its committee selected specially for this purpose, but perhaps the most important duty devolving on directors is that of making a thorough and searching examination of the assets, books, and accounts of the bank, without previous notice, at reasonable intervals between the dates of the Government

examiner's visits. These examinations should be made by such of the directors as are most familiar with figures and expert at accounts, otherwise they will not always disclose the actual condition of the bank's affairs.

Every bank officer and clerk who is faithfully discharging his duties will gladly welcome such a verification of the trust confided to his care, and, through fear of discovery by this means, the would-be dishonest official or employé may be restrained from acts ruinous to himself and detrimental to the interests intrusted to his keeping.

As directors are empowered by section 5136, par. 5, to "require bonds of" the officers whom they appoint "and fix the penalty thereof" a sufficient bond should be required of every officer or employé intrusted with the keeping of valuables or of the books in which account of such is kept. Such a course certainly is prudent as affording to stockholders and depositors some measure of protection against official negligence or dishonesty.

In this connection it is suggested that, as the necessary bonds may now be procured from companies specially organized for the purpose of furnishing such, at very low rates, the premium on

these bonds might be paid, and in some instances is paid, by the bank, instead of by the officers bonded.

There is fully as much reason and warrant for paying for such surety or guarantee of official integrity as there is for the payment of premium for insurance of the bank building and other property against the risk of destruction by fire, and surely there is no question as to the duty of directors in this latter case.

Another important matter demanding their attention is of course the provision of a suitable, convenient, and secure office in which the business of the bank may be carried on entirely separate and apart from any other business.

It is also necessary that a fire-proof and burglar-proof safe should be provided for the safe keeping of its cash, bills receivable, securities and other valuables, and also of its books and records. Wherever the safe will not accommodate the latter, a suitable fire-proof and burglar-proof vault for them should be provided in addition to the safe.

Decisions as to Liabilities; What would constitute Violations of Law "Knowingly" Committed or Permitted.

With regard to what constitutes violation of law "knowingly" committed or permitted by a director,

resort must be had to the many legal decisions on this point, two of the most recent of which by Federal courts are those in the cases of "Movius *vs.* Lee (30 Fed. Rep., 298)," and "Witters *vs.* Sowles (31 Fed. Rep., 1)."

For general and reliable treatment of this subject, reference may be had to the work of "Morse on Banks and Banking," third edition, by Parsons, chapter IX, where these two and other leading decisions are referred to.

In general terms it would seem that if a director has no official knowledge of a violation of the banking law he is not to be held personally liable for any loss or damage resulting therefrom, but if, at a board meeting or elsewhere, he officially assents to any transaction which on its face constitutes a violation of law, he may be held liable personally for any resulting loss or damage; and ignorance of the law under such circumstances could not be set up as a defense, for it is to be assumed that a person acting in such a capacity should have such a correct knowledge of the law under which he acts as is readily obtainable by a practical man of affairs.

CHAPTER III.

BOOKS, ACCOUNTS, AND RECORDS.

One of the essentials of successful banking is that the records of all transactions should be kept in a clear, simple, and systematic manner.

The number and character of books for keeping these will vary with the volume and special features of the business done by each bank, but certain of them are necessary in every case, and of these a slight sketch is here given.

A book should first be provided in which the minutes of all meetings of stockholders and meetings of directors should be promptly recorded, giving tersely but clearly an account of all business transacted at such meetings.

All *certificates of stock* should be bound in book form, with a stub to each certificate, upon which stub the name of shareholder, the number of shares issued to him, and the date when issued, should be carefully noted before the certificate is detached. This book should also be used in cases of all *transfers* of stock, a new certificate being issued in the

case of every transfer, made out in the name of the new shareholder in place of the original certificate, which should be taken up and cancelled.

All transactions shown by this stock-certificate book should be posted to the *stock ledger*, which should contain a separate account for each shareholder, so kept as to readily show at any time the name and address of every shareholder, and the number of shares standing in the name of each.

Certificates of deposit, like stock certificates, should always be issued from a book with a stub to each for noting the necessary data. The practice of noting partial payments on these certificates is apt to cause confusion in accounts. The simpler and better way in such cases is to take up and cancel the certificate first issued and issue a new one for the reduced amount. The custom which some officers have of signing these certificates *in blank* before they are needed is not a safe one and should as a rule be avoided.

Cashier's checks and all *checks* and *drafts* on other banks and bankers should also always be issued from a book having a stub upon which the necessary data regarding each check or draft drawn should be noted before it is detached.

All *deposits* subject to check should be posted daily to a ledger, showing the account with each depositor, and to this ledger all *checks* drawn against deposits should, of course, be posted daily also, in order that the balance of any depositor's account may be readily ascertained.

This ledger, generally known as the "individual ledger," should be balanced at least once a month, and at the same time all depositors' *pass-books* should be balanced and compared with the ledger, and all differences looked up and reconciled.

It is the custom with some banks to send to each depositor, at intervals, a statement exhibiting the balance of his account, as shown by the books of the bank, with the request that he verify this balance by his pass-book and return the statement to the bank, and this method serves to develop errors and sometimes false entries on the books of the bank.

In the same way all current accounts with other banks and bankers should be verified and reconciled at least once a month.

Appropriate books should be provided for recording all loans and discounts, or "bills receivable," showing names of makers and indorsers, acceptors,

or guarantors, with memoranda of all collateral security lodged with same, and the dates on which the paper is made as well as those upon which it will mature.

All stocks, securities, judgments, claims, other real estate and mortgages owned, and other assets, should be so recorded as to show readily a detailed account of these in order that the information needed for reports of condition and by the bank examiner may be obtained at any date without difficulty.

As soon as paper becomes *overdue* a separate record of such should be made, and when any overdue paper passes into the class of "bad debts as defined by section 5204," such items should again be separated from other overdue paper. Such treatment of all overdue paper and "bad debts" is necessary in order that these items may be held under special observation and that the information required by reports of condition may readily be furnished.

A *general cash-book* should contain a daily record of aggregate transactions in the various *general accounts*, viz., deposits, loans and discounts, interest, exchange, current expenses, etc., and the resulting

balance of cash on hand, showing in detail the various items of which this balance is composed.

The placing in "*cash items*" of such items as past due paper, dishonored checks, or drafts, expense items, etc., except temporarily, should be avoided, as the term when representing such assets is misleading. Items of this character should be transferred to appropriate accounts, and "cash items" should include only such as represent readily convertible value.

All items entered on the general cash-book should be posted daily to appropriate accounts on the *general ledger*, the daily balances of which should be exhibited on a statement or balance book for the purpose of showing in condensed form the resources and liabilities of the bank and the condition of its lawful-money reserve from day to day.

A form for such a daily statement is offered by way of suggestion on page 41.

A careful review of all the assets should be made frequently, and their book value, as far as practicable, adjusted to actual values, so that the books and reports of the bank may, as nearly as possible, represent the true condition of its affairs.

During recent years great improvements have been made in the methods of bank book-keeping

with the result of simplifying these and saving time and labor. Information as to these may readily be obtained from leading banking periodicals, and also from the examiners and from banks in the larger cities where these methods have been generally adopted.

In conclusion, it is suggested that it is all-important that the accounts and books of a bank should be posted up to date, as far as this may be possible, and that frequent trial balances and verifications are very necessary for the purpose of developing and rectifying errors which, in spite of all precautions will inevitably occur.

Form for Daily Statement of Resources and Liabilities.

RESOURCES.			LIABILITIES.		
Loans and discounts (on time) . .	$298,076		$150,000	Capital stock.	
Overdrafts	484		30,000	Surplus fund.	
Stocks, securities, judg's, claims, etc.	20,000		19,087	Undivided profits.	
Banking-house, furniture and fix't'rs	15,000				
Other real estate and mortgages owned	10,000		$199,087		
			2,340	Less cur't expenses and taxes paid.	
Resources not available on demand .		$343,560	$196,747	**Banking capital.**	
Loans payable on demand	30,000		10,000	Bills payable.	
U. S. bonds to secure circulation .	50,000		20,000	Notes and bills rediscounted.	
U. S. bonds to secure deposits . .	100,000				
Premiums on U. S. bonds	26,500		226,747	. **Liabilities not payable on demand.**	
5 per cent. redemption fund with U. S. Treasurer	2,250		$44,500	National-bank notes outstanding.	
Checks and other cash items . . .	1,762		110,000	U. S. deposits.	
Exchanges for clearing-house . .	3,000		25	Dividends unpaid.	
Due from other banks and bankers	23,709		230,989	Individual deposits.	
Due from approved reserve agents .	26,825		20,495	Due to other National banks.	
			2,000	Due to State banks and bankers.	
Resources available on demand .		264,046	408,009	. **Liabilities payable on demand.**	
Bills of other banks	6,777				
Specie, $11,402; minor coins, $466 .	11,868				
Legal-tender notes	8,505				
Cash in bank .		27,150			
Total resources		$634,756	$634,756	. . . . **Total liabilities.**	

CHAPTER IV.

GENERAL BANKING POWERS CONFERRED BY SECTION 5136, PAR. 7.

To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.

Court Decisions Construing These.

As it is very important to know what powers are granted to a National bank under its charter, the following extracts from two decisions are quoted, as throwing some light on this subject, and as showing what a bank may safely and prudently do without exceeding the powers clearly granted by its charter.

From the decision of the Supreme Court of Pennsylvania, in Fowler *vs.* Scully, in 1873 (Thompson's National Bank Cases, p. 856), we quote, as follows, on this point:

In view of the rule of interpretation of such charters given to us by the Federal courts, and the maxim *expressio unius est exclusio alterius*, the argument might close with the terms of the power to loan money on *personal* security; for agreeably to this rule and maxim no other security than personal can be taken for money lent. This is the law of the bank's capacity and of its control. It accords also with the nature of banking as a business, which is precisely described in the language of the law itself; the *discounting* and *negotiating* of promissory notes, drafts, bills, and other evidences of debt (meaning, of course, debts *ejusdem generis*, such as checks, certificates of deposit, etc.); the buying and selling of bills of exchange, bullion, and lending of money on personal security. The reasons are manifest. The business of a bank is commercial, not that of dealing in real estate, brokerage, etc. It, therefore, does not buy and sell real estate, groundrents, mortgages, stocks, produce, etc.

And, further, from United States Supreme Court decision (First National Bank of Charlotte *vs.* National Exchange Bank of Baltimore, Thompson's National Bank Cases, p. 128), as follows:

Authority is thus given to transact such a banking business as is specified, and all incidental powers necessary to carry it on are granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs within the general scope of its charter safely and prudently. This necessarily implies the right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others. Its own obligations must be met, and

debts due to it collected or secured. The power to adopt reasonable and appropriate measures for these purposes is an incident to the power to incur the liability or become the creditor. Obligations may be assumed that result unfortunately. Loans or discounts may be made that can not be met at maturity. Compromises to avoid or reduce losses are oftentimes the necessary results of this condition of things. These compromises come within the general scope of the powers committed to the board of directors and the officers and agents of the bank, and are submitted to their judgment and discretion, except to the extent that they are restrained by the charter or by-laws. Banks may do, in this behalf, whatever natural persons could do under like circumstances.

To some extent it has been thought expedient in the National banking act to limit this power. Thus, as to real estate, it is provided (Revised Statutes, sec. 5137; 13 Stat., 107, sec. 28) that it may be accepted in good faith as security for, or in payment of, debts previously contracted; but, if accepted in payment, it must not be retained more than five years. So, while a bank is expressly prohibited (sec. 5201; 13 Stat., 110, sec. 35) from loaning money upon or purchasing its own stock, special authority is given for the acceptance of its shares as security for, and in payment of, debts previously contracted in good faith; but all shares purchased under this power must be again sold or disposed of at private or public sale within six months from the time they are acquired.

Quotations from this decision will also be found in paragraph on dealing in stocks and bonds (p. 50).

Power to Borrow Money; Power to issue Time Certificates of Deposit.

As the question whether a National bank has the power to borrow money involves the question as to its right to issue time certificates of deposit, the following extracts from third edition of "Morse on Banks and Banking," by Parsons, to which we are indebted for quotations made on other topics in this work, are given as a summary of judicial decisions bearing on this subject.

Business Powers. Par. 51, sec. 5. As involved in the power to receive deposits, a bank may issue certificates of deposit, which in Massachusetts and Pennsylvania are not regarded as negotiable paper; but in other States they are considered promissory notes (which seems clear upon any definition of a note to be found in the authorities), negotiable under the same limitations as notes

They are used to save carrying money; but as they do not pass by delivery, but only by indorsement, they are not intended to circulate as money in the sense of a banking law, such as the National or New York law; and, therefore, the prohibition in those acts of issuing *notes to circulate as money*, other than those provided for or named in said acts, does not interfere with the power of a bank to issue certificates of deposit.

They may be payable on demand or on time, if the circumstances justify the bank in borrowing on time (see par. 63), unless there is a restriction in the organic law or by statute. If a bank can not issue its negotiable promissory note on time, neither can it issue a negotiable certificate of deposit of

this description. If the note would be void, so, likewise, is the certificate. If, however, the bank is empowered to issue promissory notes, subject only to the restriction that it shall issue none which are designed to pass into circulation as currency, but only such as become necessary in the ordinary course and conduct of its affairs, and are strictly business paper, then it may issue certificates of deposit, whether payable on demand or otherwise, subject only to the same restriction. By reason of the ease with which such instruments may be used for circulation, the courts have often been rigid in scrutinizing them, and applying the strict letter of the law to them; but they have never, that we have found, substantially modified or departed from the general principles above laid down.

Business Powers. Par. 63, sec. 9. So far as it is involved in receiving deposits, borrowing is a part of banking, but borrowing *stricto sensu*, taking a loan for a *definite time*, instead of one payable on demand, as ordinary deposits are, is not a part of the business of banking, nor a necessary incident thereof as a *continuous practice;* but (like every other corporation in the United States) a bank has an inherent right to borrow money whenever it is reasonably necessary in the proper conduct of its business, unless specially restricted. The privilege is the child of necessity, and is limited by the same necessity or intrinsic propriety which gives it birth. The borrowing must be incidental to the legitimate banking business of the association, otherwise the act is *ultra vires;* as if the money is obtained for speculation. Aside from the theory of law, as no one but the bank can well judge whether a loan is reasonably necessary or not, the practical fact is that a bank can borrow money whenever it wishes to, and, if the money is used in its proper business, no fault will be found, and even if wrongly applied, it will not affect the validity of the loan as between the parties ordinarily. * * *

The right to borrow money is also clearly implied in section 5202, which fixes the limit for such borrowing as follows:

No association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

From these it will appear that a bank has undoubted right to borrow money whenever it becomes necessary to do so in the regular course of business, but that it should not make a practice of doing so continuously. Whenever it becomes necessary for a bank to borrow money habitually, in order that it may be able to supply its regular customers with accommodations, it is evident either that its resources are locked up in inconvertible forms, or that its capital is insufficient.

In the former case, every effort should be made to convert its assets into available funds, and in

the latter it should seek to increase its capital stock to the extent of its regular needs, for it is neither safe nor prudent to allow its customers to depend for accommodation upon funds procured frequently from a distance, which may at any time be withdrawn by the lenders; and, further, if a bank can make a profit by regularly lending money for the use of which it has to pay interest, it would seem that it has the ability to make the investment of additional capital stock profitable to those by whom it may be contributed.

In conclusion, this power of a bank to borrow money is one that should be exercised only by the board of directors, or by the managers of the bank with the special sanction and approval of the board. It is a power intended for use in cases of emergency only, and should be carefully held in reserve for such occasions.

Bills Payable Defined.

It is a question with a bank sometimes to determine what items, if any, of its liabilities should be included under the head of "bills payable" on its books, and in its reports of condition. Strictly speaking, all deposits with a bank are loans to it, and the marked distinction between a "deposit"

with a bank and money loaned to, or borrowed by, it seems to consist in the circumstance that a "deposit" usually voluntarily seeks the bank, while a loan to it is money which the bank seeks to borrow for a longer or shorter period. But money may be borrowed by a bank either on the condition that it is returnable to the lender *on demand*, or at some fixed future date. It would seem that this then should be the dividing line between "deposits," or amounts "due to other banks," and "bills payable," namely, that if the amount borrowed is payable to the lender only at some fixed future date, it should be entered as "bills payable," but if payable *on demand*, as "deposits" or "due to other banks or bankers." In the latter case it is necessary that reserve should be maintained on the amount borrowed, as is required on all liabilities payable on demand, but no reserve is required on "bills payable." It matters not whether money is borrowed by a bank on promissory note, certificate of deposit, open account, or otherwise; if it is not returnable *on demand* it should be classed as "bills payable."

Post-Notes Defined.

It has at times been questioned whether the restriction as to issuing "post-notes" contained in

section 5183 did not extend to the issuing of time drafts, time certificates of deposit, and other obligations of the bank conditioned for payment at some future time, but a recent court decision (Riddle *vs.* National Bank, Butler, Pa., 27 Fed. Rep., 503) has declared that time certificates of deposit are not to be regarded as "post-notes." This decision, considered in connection with the well-settled principle that a bank has the right to borrow money when necessary, would make it appear that the term "post-notes" used in the statutes was intended only to prevent the issue of such notes to circulate as money.

Right to Deal in Stocks and Bonds Denied by the Courts.

With regard to the right of a bank to deal in *stocks*, the Supreme Court (First National Bank of Charlotte *vs.* National Exchange Bank of Baltimore, 92 U. S., 122) expressed the following opinion:

> Dealing in stocks is not expressly prohibited; but such a prohibition is implied from the failure to grant the power. In the honest exercise of the power to compromise a doubtful debt owing to a bank, it can hardly be doubted that stocks may be accepted in payment and satisfaction, with a view to their subsequent sale or conversion into money, so as to make good or reduce an anticipated loss. Such a transaction would not amount to a dealing in stocks.

In support of this decision we find in the National-bank Act itself internal evidence to the same effect. Section 5154, in providing for the conversion of State banks to National banking associations, makes an exception in the matter of the par value of the shares of such State banks, and another exception with regard to their holding stock in other banks as follows:

> And any State bank which is a stockholder in any other bank, by authority of State laws, may continue to hold its stock, although either bank, or both, may be organized under and have accepted the provisions of this Title.

The only reasonable inference to be drawn from this special provision of the law, in favor of State banks converting to the National system, is that it was not intended that National banking associations—originally organized as such—should have the power to purchase and hold such stocks as investments.

And so with regard to the right of a bank to deal in *bonds*. We quote, as follows, from the decision of a Maryland court (Weckler *v.* First National Bank, 42 Md., 581):

> To the usual attributes of banking, consisting of the right to issue notes for circulation, to discount commercial paper, and to receive deposits, this law adds the special power to

buy and sell exchange, coin, and bullion; but we look in vain for any grant of power to engage in the business charged in this declaration. It is not embraced in the power to "discount and negotiate" promissory notes, drafts, bills of exchange, and other evidences of debt. The ordinary meaning of the term "to discount" is to take interest in advance, and in banking it is a mode of loaning money. It is the advance of money not due until some future period, less the interest which would be due thereon when payable. The power to "negotiate" a bill or note is the power to indorse and deliver it to another, so that the right of action thereon shall pass to the indorsee or holder. No construction can be given to these terms, as used in this statute, so broad as to comprehend the authority to sell bonds for third parties on commission, or to engage in business of that character. The appropriate place for the grant of such a power would be in the clause conferring authority to "buy and sell;" but we find that limited to specific things, among which bonds are not mentioned, and upon the maxim *expressio unius est exclusio alterius*, and in view of the rule of interpretation of corporate powers before stated, the carrying on of such a business is prohibited to these associations. Nor can we perceive it is anywise necessary to the purpose of their existence, or in any sense incidental to the business they are empowered to conduct, that they should become bond-brokers, or be allowed to traffic in every species of obligation issued by the innumerable corporations, private or municipal, of the country. The more carefully they confine themselves to the legitimate business of banking, as defined in this law, the more effectually will they subserve the purposes of their creation. By a strict adherence to that they will best accommodate the commercial community, as well as protect their shareholders. Such is our construction of this statute, and it is supported by the

best considered authorities and the decided preponderance of judicial opinion in other States.

From these decisions it would appear that, while it is lawful for a bank to acquire stocks or bonds in good faith *for the purpose of securing debts previously contracted*, the power to "traffic" in them—that is, to buy them with a view of selling them at a profit—or to hold them as investments, is not among the incidental powers enumerated in section 5136, and is, therefore, a power which it has no legal right to exercise.

From the general tenor of the law, and the restrictions therein imposed, and the construction placed upon the law by numerous court decisions, it would appear that the framers of the law intended to prevent the banks, as far as possible, from getting their assets into any inconvertible form, and for this reason the restrictions as to real estate transactions are imposed.

If the investment of their resources in stocks or bonds, *except to save debts previously contracted*, would have the same effect of locking up their funds as do investments in real estate, and experience proves that frequently it does, then it would seem that such investments should be avoided by

all bank managers who desire to be on the safe side of the law.

The accumulation of a large fund of surplus and undivided profits in a bank which it is unable to invest profitably in such loans and discounts as are permitted by law, make it apparently necessary for the bank to purchase stocks, bonds, and other securities as investments for these "surplus funds" as they are sometimes termed, in order that the stockholders may realize dividends on these funds, and this will account mainly for the large holdings of some banks.

It would seem, however, that the same ends could be attained if these surplus funds or accumulated profits were distributed in dividends to the stockholders and invested by them in the same securities, either as individuals, or by trustees acting for them in groups or as a whole, and such a course would certainly remove any question as to the legality of such investments when made by the bank in its corporate capacity.

Purchasing Commercial Paper.

It is the custom of some banks to purchase commercial or business paper, either from brokers or from the actual owners of such paper without re-

course to such brokers or owners, or in other words, without their guarantee or indorsement. Whether or not the power to do this is granted by law to a National bank, has never been decided by the United States Supreme Court, and the decisions rendered by various State courts have been both favorable and adverse to this view. (See "Morse on Banks and Banking," third edition, by Parsons, pars. 72 and 73.)

The whole question appears to hinge upon the proper definition of the word "negotiating" occurring in par. 7, section 5136. On this point, as on some others, the National-bank Act appears to contain some internal evidence as to the intended meaning of this term, for in section 5200 we find that "the discount of commercial or business paper actually owned by the person *negotiating* the same" is excepted from the limit as to amount which is applied to direct loans, or "money borrowed." As used in this section it is clear beyond question that the word "negotiating" means simply "offering for discount," and, as elsewhere suggested in this work, the evident reason for the exception of such discounted paper from the limit applying to "money borrowed," was that it was

of course presumed that the person actually owning and negotiating such paper would indorse it, or guarantee its payment by the maker. If this view is incorrect we look in vain for any valid reason for the exception made in its favor.

It seems not unreasonable to assume, therefore, that the word "negotiating," as used in par. 7, section 5136, and following so closely after the word "discounting" in the same clause, has the same significance as that implied in section 5200, and that it was intended to confer upon a bank only the power to "offer for discount" or to "rediscount" paper which, under the power granted in the same paragraph, it had already "discounted."

At all events, so long as this point is not definitely adjudicated by the Supreme Court, it would seem to be the safer course for such National banks as claim the right to exercise this power to purchase paper without indorsement or guarantee, that they should consider money invested under such circumstances practically as "money borrowed" by the makers of the paper or as direct loans to them; and, therefore, should limit such purchases in each and every case to an amount not exceeding one-tenth part of their capital stock as prescribed by section 5200.

CHAPTER V.

TRANSACTIONS IN REAL ESTATE.

SEC. 5137. A National banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.

Restrictions Imposed by Law.

It will be clearly perceived from the language of this section that the *only* purpose for which a National bank may lawfully "purchase, hold, and convey real estate" (other than its "banking house") is by way of security for "debts previously contracted." This is emphasized by the use of the

words "and for no others" in the first paragraph of the section, and altogether the intent of the statute is as explicitly expressed as plain language can do this, yet in case any doubt arises as to this *intent*, we have further the plain construction placed upon it by the Supreme Court in the decision already quoted on page 44 in the following language:

> Thus, as to real estate, it is provided (section 5137) that it may be accepted in good faith as security for, or in payment of, debts previously contracted; but if accepted in payment, it must not be retained more than five years.

This limit of five years was probably fixed by the framers of the law as affording ample time for disposing of such real estate.

It is presumed in some cases where a bank is either unable or unwilling to dispose of real estate at the end of the five-year limit, that it conforms to the legal requirement when it charges the value of the real estate off its books, but this is a mistaken view of the law, which requires that the title to, or mortgage on, real estate should be disposed of, and makes no reference to the appearance of its value among the assets of the bank.

In some cases the law on this particular point of

holding possession is construed as referring to the actual occupancy by the bank of the real estate for which the bank holds title or mortgage. It is scarcely necessary to state that the word "possession" refers to the holding of the written legal instrument by the bank, and not to the actual occupancy by the bank of the property over which the title or mortgage gives it legal control.

Securities Based on Real Estate Values.

Besides titles and mortgages, however, there are so many other forms under which an interest in real estate may be acquired, to which the *letter* of the law does not apply, and with regard to the holding of which the question of legality will arise, that the language of the opinion of the United States Supreme Court, in its decision in the case of Union National Bank *vs.* Matthews (98 U. S., 658), is quoted below as bearing directly on this question.

The court, with regard to section 5136, which permits a bank to loan money "on personal security," said:

> Section 5136 does not, in terms, prohibit a loan on real estate, but the implication to that effect is clear. What is so implied is as effectual as if it were expressed.

Passing on to the restrictions imposed by section 5137, it defined the object of these as follows:

The object of the restrictions (in section 5137) was obviously threefold. It was to keep the capital of the banks flowing in the daily channels of commerce, to deter them from embarking in hazardous real estate speculations, and to prevent the accumulation of large masses of such property in their hands to be held, as it were "in mortmain." The intent, not the letter of the statute, constitutes the law.

With this language in view, it would appear that the holding of real estate *in any form* except for the purposes clearly stated in section 5137 should be carefully avoided by all bank managers who desire to conform to the "intent of the statute."

For this reason, the holding, *as investments*, of any and all stocks, bonds, or other securities, the value of which rests directly upon real estate, *except to save debts previously contracted*, should be regarded by such managers as violations of the *spirit* of the law, if not of its *letter*.

Some of the forms, other than deeds and mortgages, in which real estate values present themselves, are the following: land debenture bonds; the stocks and bonds of land improvement companies, mortgage and trust companies, building and loan associations; of companies whose capital is

wholly invested in theatres, opera-houses, hotels, elevators, cotton-presses, warehouses, and the stocks or bonds of any similar enterprises where the capital is invested mainly, or entirely, in real estate.

In connection with this subject of holding or dealing in real estate securities, what is said elsewhere with regard to dealing in stocks and bonds generally (page 51) should also be taken into consideration.

As such stocks, bonds, and other securities of like nature, though depending largely or entirely upon real estate for their value, are *personal security*, the holding of them as *collateral security* for loans appears to be warranted by law, which permits "the loaning of money on personal security." (Section 5136.)

Supreme Court Decisions.

With regard to making loans, secured by pledge of notes or bonds secured by liens on real estate (such as mortgages, deeds of trust, and the like) as *collateral* security for such loans, the Supreme Court, in the case of *Union National Bank* vs. *Matthews*, already referred to, decided that the taking of such collateral security is not unlawful, inasmuch as the mortgage or its equiva-

lent in such cases does not run directly *to* the bank, but to the borrower.

In the Matthews case, the court was asked to decide as to the legality of the following transaction:

A National bank loaned a mercantile firm $15,000 on its promissory note. The firm assigned to the bank, as collateral security for this loan, a note for a like amount made by two persons in favor of the firm, which note was secured by a deed of trust on real estate, executed by one of the makers of the collateral note. The firm failed to repay their loan at maturity, and the bank proceeded to realize upon the real estate, whereupon the maker of the deed attempted to enjoin the bank from doing this, "upon the ground that the loan was made upon real security, which was forbidden by the statute."

The court decided that the loan was not unlawful, and the grounds upon which it reached its decision on this point are given in the following passage from its decision in the case of *National Bank* vs. *Whitney* (103 U. S., 99), in which the court clearly restated the Matthews case, and used the following language:

In coming to this conclusion this court considered the transaction in two aspects: first, as not being within the let-

ter of the statute, because the deed of trust was not executed *to* the bank. * * *

Viewed in the first aspect, the court held that, as a mortgage, the deed of trust was merely an incident to the note, and a right to its benefit, whether it was delivered or not with the note, passed with the transfer of the latter. If the loan had been made upon the note alone, the benefit of the deed as a mortgage would have inured to the bank by operation of law. Of course, that which the law would give independently of a direct transfer by the mortgagee, the statute did not intend to defeat, because such transfer was made.

The decision appears to have been based upon the view, first, that the collateral note, even though secured by the deed of trust, was *personal security;* and, secondly, that the deed of trust (which it regarded as the equivalent of a mortgage) was not executed directly *to* the bank.

In making loans on such collateral security, however, the *object* of the restrictions contained in section 5137, and the "intent of the statute," as defined by the Supreme Court in the Matthews decision, should always be held in mind; and the decision of the court in this case is not to be construed as warranting loans on such security, which do not in reality, as well as in appearance, fully conform to the actual conditions of the case upon which the decision was rendered.

CHAPTER VI.

RESTRICTIONS AS TO LOANS IMPOSED BY SECTION 5200.

SEC. 5200. The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including, in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association actually paid in. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed.

Examples Illustrating Excessive Loans and Such as are Not Excessive.

There is probably no section of the National-bank Act that leaves more doubt as to its true and exact application than this which prescribes a limit to loans.

As far as the *intent* of the framers of this section can be divined it appears to make a distinction between "loans" and "discounts." The restriction is limited to "money borrowed" by any "person," "company," "corporation," or "firm," including in the liabilities of a company or firm for money bor-

rowed, the liabilities of the several members thereof, and in order to determine whether a "loan" is excessive or not, it is important to know who gets the benefit of the "money borrowed" from the bank.

The paper upon which loans are made varies so much in form that nothing but the knowledge of the actual facts connected with each transaction can enable the officers of a bank to determine whether or not they are violating this section of the law.

The number of phases in which the question presents itself to a bank is almost limitless, but a few examples are given, by way of illustration, which, it is hoped, will make the general meaning more clear than it appears from the text.

1. Taking a bank with a capital of $100,000 actually "paid in," and assuming that the firm or company of John Smith & Co. wishes to "borrow money" from the bank, up to the limit, it would not be lawful to loan them more than $10,000 (one-tenth of the "capital stock"); and the fact that John Smith & Co. were able to give the strongest and best indorsers for an amount greater than $10,000, or to put up collateral security of ample and undoubted market value, would not entitle them

lawfully to borrow one dollar more than $10,000, as the law makes no exception in such cases, the limit applying solely to the *amount* of the loan *without reference to its security.*

2. If, before the firm applied for a loan, John Smith or any one partner had borrowed $10,000 *for his individual benefit*, then it would not be lawful to loan anything to the firm, for their limit for "money borrowed" would have already been exhausted by the loan to such member of the firm.

3. It is questionable whether it would be lawful in such a case for the bank to loan any money on the paper of any person, firm, or corporation, with John Smith & Co., as *indorsers* of such paper, if it were known that John Smith & Co. were directly to get the benefit of the money so borrowed, for this would appear to be an evasion of the law; but if any person, firm, or corporation, whose paper was indorsed by John Smith & Co., wanted to borrow money on such paper for his or its individual benefit, the fact that it was indorsed by John Smith & Co. would not make a loan to such person, firm, or corporation unlawful.

4. In case John Smith & Co., as a firm, had borrowed no money of the bank it would be lawful to

loan to each member of the firm, upon his individual credit and responsibility, an amount equal to the limit, provided the money so borrowed by each partner was for his individual benefit, and not for the benefit of the firm.

5. Again, if John Smith & Co. had "borrowed money" up to the limit, and any other person, firm, or corporation should choose to borrow money of the bank upon his or its own responsibility and credit, it would be lawful for any such person, firm, or corporation, to let John Smith & Co. have the benefit of the money so borrowed. It is no affair of the bank to know what disposal is made by the borrower of the money borrowed.

6. It sometimes happens that several different firms have one or more partners in common, and the question will arise whether it is lawful to loan each one of the firms an amount equal to the limit. In such a case it would seem that if such firms are doing business entirely upon the capital owned solely by such common partner, or partners, they should be regarded virtually as one firm, and the total of loans to them should not exceed the limit; but if each of the different firms really represents separate and distinct capital invested in its business,

it appears that loans up to the limit may lawfully be made to each firm.

Deposits with Banks and Bankers regarded as Loans.

Amounts on deposit with State and private banks and bankers in excess of one-tenth of the capital stock, have always been held by the Comptroller's office to be violations of this section also, for the following reasons:

In the decision of Bank *vs.* Lanier (11 Wallace, 369), which was on some other point of law, the Supreme Court pronounced the following opinion as to "deposits," viz.:

> But a deposit is nothing but a loan of money. * * * It is well known that country banks keep on deposit in New York with bankers and merchants a considerable amount of money for their own convenience, for which they receive more or less of interest. But whether interest be obtained or not, these deposits are, equally with paper discounted over the counter of the bank, loans of money, and the reason of the rule is equally applicable to them. The banker is accountable for the deposits he receives as a debtor, and the individual borrower of money from the bank sustains no other relation to it. In both cases money is borrowed, to be returned in a greater or less period of time, according to the contract of the parties.

In this view of the case, deposits are loans, and as a State bank, a private bank, or a banker is

either a person, a company, a corporation, or a firm, any deposit with any such person, company, corporation, or firm is regarded as a loan, or "money borrowed," and is subject to the restriction as to amount, which is prescribed by section 5200. It may be that the courts would not hold that amounts in excess of the limit sent to such banks or bankers for collection are to be regarded as in violation of law, but measures should be taken to reduce such amounts within the limit as soon as it is ascertained that the collections have been made by the bank or banker receiving the same.

Exceptions as to Discounts and Examples Illustrating These.

Coming, then, to the case of "discounts," which are excepted from the restriction as to amount, two exceptions are made, as follows:

"1. The discount of bills of exchange drawn in good faith against actually existing values;" and,

"2. The discount of commercial or business paper actually owned by the person negotiating the same."

Such paper as is clearly embraced in these two classes, the law says, "shall not be considered as money borrowed," and is, therefore, to be excepted from the restriction as to amount.

As an illustration under the first exception, if the firm of John Smith & Co., who had already "borrowed money" to the extent of the limit, should offer the same bank bills of exchange drawn against shipments of cotton, wheat, corn, iron, or any other merchandise which is readily convertible into money, it would be lawful for the bank to discount such paper to any limit which it considered safe. Such bills or drafts are generally secured by the attachment of bills of lading for the shipments against which the bills are drawn, but if the bank is satisfied of the actual existence of the values and with the good faith of the parties to the transaction, the security of bills of lading, though desirable, is not absolutely essential.

With regard to the scope of the second exception, it will be assumed, for the sake of example, that the firm of John Smith & Co., who have already "borrowed money" up to the legal limit, offer to the same bank for discount paper which they have taken from their customers either for merchandise sold, money loaned, or other valuable consideration. In such a case, if John Smith & Co. are the bona fide owners of such paper, the

bank may discount it for John Smith & Co. as "commercial or business paper actually owned by the person negotiating the same" to any limit which, in the judgment of the directors of the bank, it may be considered safe to do so.

Again, if the business paper of John Smith & Co. were offered to the bank for discount by any person, firm, company, or corporation actually owning such paper, it would be lawful for the bank to discount the same, although John Smith & Co. had already "borrowed money" of the bank to the legal limit.

It would seem that the intent of the framers of this section was, using a homely phrase, to prevent a bank from putting "all its eggs into one basket" by making direct loans to any one person, firm, or corporation, for even if the borrower were abundantly good, or could lodge with the bank ample, undoubted security for the "money borrowed," the loan of a large amount to any one party able to offer such security might operate to deprive others of their due share of the benefits afforded by a bank, which is established for the accommodation of the public at large.

The exceptions noted were probably made because the transactions covered by them were not only regarded as being generally better secured by reason of the guarantee of both parties to such transactions, but also because in this way the benefits of the bank's resources would be better distributed to the public for whose accommodation it is established.

Overdrafts are Loans.

Overdrafts are temporary direct loans to the parties making them, or "money borrowed" in the least desirable form, and, as such, should be so regarded and treated in computing the total liabilities to the bank of any person, firm, company or corporation for "money borrowed."

CHAPTER VII.

RESTRICTIONS WITH REGARD TO A BANK'S ACQUIRING AND HOLDING ITS OWN STOCK.

SEC. 5201. No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section 5234.

Penalty for Holding beyond Time Limit.

It will be observed that the law provides a penalty which may be summarily applied by the Comptroller to any violation of the law in this respect, and the reason for this it is not difficult to find.

Whenever a bank uses any portion of its capital to make a loan on its own shares, or to purchase them, it reduces or impairs its capital stock by such an amount, and, in addition, deprives its creditors of the additional security afforded by the contingent

liability attaching to the shares, if held by a solvent shareholder.

Violations of the *spirit* of this section, if not of the letter, not infrequently occur upon the organization of a bank, where shareholders are allowed to give their notes for a portion or the whole of their holdings, without being required to lodge their stock with the bank as security, in *direct* violation of the letter of the law.

Such evasions of law by officers, on the threshold of a bank's career, do not augur well for its future success, which must depend largely upon honest and fair dealing with all parties having intercourse with it.

The term of six months, during which a bank is allowed to hold its own stock taken for debt, was probably fixed because regarded as ample time in which to arrange for its disposal.

CHAPTER VIII.

EARNINGS, SURPLUS, AND DIVIDENDS.

SEC. 5199. The directors of any association may, semi-annually, declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall amount to twenty per centum of its capital stock.

SEC. 5204. No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any associations, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section fifty-one hundred and forty-three.

SEC. 5212. In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any

dividend, the amount of such dividend, and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association.

Legal Requirements regarding Net Profits and Surplus; "Bad Debts" Defined.

Section 5199 empowers the directors to declare a dividend semi-annually, if the "net profits" of the bank will admit; and, as there appears to be no prohibition in the law against their declaring dividends oftener than this, or less frequently, they are permitted to do so, provided they comply with all the requirements of the law in respect to surplus, dividends, and earnings. Before declaring a dividend it is necessary, of course, to know whether the "net profits" will admit of this, and section 5204 requires that "net profits" must be arrived at by deducting from gross earnings, or "undivided profits" from all sources, the following items:

1. Expenses and taxes paid.
2. Losses which have been sustained from any cause.
3. The amount of "bad debts" as these are clearly defined by section 5204. It will be observed here that these debts, which are technically "bad," are not to be confused with those which are known to be *actually* bad, for these latter should be classed with "losses sustained;" but, at the same time, section 5204 requires that debts which are "bad" technically should always be taken into account in comput-

ing net profits before declaring a dividend, whether they are charged off the books of the bank or not.

Having arrived at the "net profits" in this way, it is necessary that every bank whose "surplus fund" is less than 20 per cent. of its capital stock should, before declaring a dividend, carry at least 10 per cent. of these profits to this fund as required by section 5199. The bank may, if it so desires, carry to the fund an amount greater than the required 10 per cent. of its "net profits," but, once this is done, the law makes no provision for withdrawing the excess so carried for the purpose of declaring a dividend so long as the surplus is less than the required 20 per cent. While the law is entirely silent as to the purposes for which the surplus is created and may be used, the presumption is that the object of its accumulation is to provide a fund for meeting unexpected or unusual losses without resorting to an assessment of the stockholders, in case such losses exceed the "undivided profits" on hand at the time; and, in this view of the subject, a bank whose surplus is 20 per cent. or less is allowed to use the whole or a portion of it to make good such losses, but only then after it has first exhausted all of its "undi-

vided profits" on hand. In such a case, a bank having to use all of its undivided profits for making losses good, has, of course, nothing wherewith to declare a dividend, and must perforce pass its dividend for such a period. As soon thereafter, however, as its "net profits" will admit, it may declare a dividend, but before doing this it will be necessary to carry one-tenth of such profits to the surplus fund, which has been reduced below 20 per cent., and to continue to do this at the end of each dividend period until this fund again reaches the required limit of 20 per cent.

Whenever the surplus of a bank exceeds 20 per cent. of its capital, it is lawful for the directors to use the *excess* for declaring a dividend or for making losses good, and in this latter case it will not be necessary to pass any dividend, provided the excess over 20 per cent. in the surplus is sufficient to provide for such losses.

Legal Requirements with regard to Reports of Dividends and Earnings; How to Make These Up.

As section 5212 prescribes that "each association shall report to the Comptroller of the Currency within ten days after declaring *any* dividend, the amount of such dividend, and the

amount of net earnings in excess of such dividend," and further, that "such reports shall be attested by the oath of the president or cashier of the association," it is necessary that banks should make reports to the Comptroller, not only at their regular semi-annual dividend periods, but also of any quarterly or special dividends they may declare between those periods; and, in order to comply with the requirements of the law, reports of any such special dividends should be made in the same form as reports of earnings and dividends made at the regular semi-annual periods, so as to show not only the net profits on hand at date of previous report, but also the gross earnings from all sources since, as well as deductions for all expenses and taxes paid, losses incurred, and "bad debts," as defined by section 5204. Otherwise its "net earnings, in excess of such dividend," can not be truly shown by the report.

In making such special dividend reports, it is not necessary that a bank should close the accounts on its books, if it does not desire to do so, but it is essential that all items showing profit and loss for the period covered by the report should be fully entered in the report.

Capitalization of Surplus.

While a bank having a surplus equal to, or less than, the required 20 per cent. may not be permitted by the Comptroller to capitalize such surplus in case of any increase of its capital, any bank having a surplus exceeding this limit is, of course, permitted to convert the amount in excess of the 20 per cent. into capital if it so desires, for such excess practically represents "undivided profits."

Where the surplus is equal to, or less than, 20 per cent., the original shareholders may, however, utilize a portion of this surplus in the following manner:

The capital being $50,000, the surplus $10,000, and the proposed increase $50,000, the ratio of the surplus ($10,000) to the increased capital ($100,000) will be 10 per cent. If the new stock be placed at 110 (its true value) a premium of $5,000 will be realized on the increase when sold, which premium should properly go to the original shareholders (the owners of the surplus) who in place of the premium so collected relinquish to the new shareholders a corresponding interest in the surplus fund.

The *rate* of premium in any given case may be obtained by dividing the amount of surplus by the amount representing the total capital stock after the proposed increase is added.

CHAPTER IX.

REPORTS OF CONDITION REQUIRED BY SECTION 5211.

SEC. 5211. Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the associations at the close of business on any past day by him specified; and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.

SEC. 5213. Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein men-

tioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.

AN ACT

Defining the Verification of Returns of National Banks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by National banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven: *Provided*, That the officer administering the oath is not an officer of the bank.

Approved February 26, 1881.

Information with regard to Same; Filling Out Schedules.

The examination of five reports of condition a year from each of over 3,300 banks necessarily involves a large amount of correspondence between

the Comptroller's office and the banks. Much of this correspondence relates to violations of law, such as excessive loans, loans on, and investments in, real estate, deficient reserve, etc., but a very large proportion is made necessary by omissions on the part of those who make up the reports to fully fill out *schedules* on the back of the report, and a little more care in this respect would relieve the banks from the trouble and annoyance of replying to the thousands of letters which are addressed to them for the purpose of obtaining information which should be given in the report when rendered.

The law requires the banks to make these reports to the Comptroller "five times a year," "according to the form which may be prescribed by him," and, under this authority, he calls for certain information in the schedules on the back, which it is important to have in order to know the true condition of each bank, and whether its operations are conducted in conformity to law or not.

When it is remembered that, as a rule, the examiner visits each bank only once a year, it is very important that these sworn statements of condition should be full and complete in every respect. In very many cases violations of law and

incorrect practices, which occur through ignorance or inexperience, are developed by these reports, and timely warning and suggestion from the Comptroller's office are all that is necessary to prevent recurrence.

The items which are most frequently omitted from the schedules are the following:

Bad debts, as defined by section 5204, Revised Statutes.
Other suspended and overdue paper.
Liabilities of directors (individual and firm) as payers.

Under the first of these three the bank is required to state, not debts that are actually worthless, but all such as are technically "bad debts" as clearly defined by section 5204. The amount of "bad debts" on the books of a bank has a very important bearing on its condition, for if this exceeds the sum of its surplus fund and net undivided profits, it is an indication that its capital may be impaired.

The schedule of "stocks, securities, judgments, claims, etc.," should clearly show the different items composing the total of these, and is intended to embrace only such items as are *owned* by the bank. Any such items held as *collateral* for loans should not be entered here, but in the

appropriate place in schedule of "loans and discounts." No real estate items should be entered here, but in the schedule for "loans and discounts," if held as collaterals, and in schedule for "other real estate and mortgages owned," if owned by the bank. In this latter schedule, as also in the schedules provided for listing "loans and discounts, secured by mortgages or other real estate security," it is important to state *how* and *when* such investments or collaterals were acquired, in order to show whether they were acquired in conformity to provisions of section 5137, and whether they have been held longer than five years.

In a great many cases replies from the banks show that no entries are to be made in the schedules left blank, but as it is impossible to infer this from the face of the report in the case of *bad debts*, *overdue paper*, *liabilities of directors*, and *excessive loans*, it is necessary to address a letter of inquiry to the bank in each case. For this reason a note in red ink is printed conspicuously on the back of the report, requesting the bank to "fill all schedules, writing in the word 'none' wherever no amount is to be entered."

Verification and Attestation.

After seeing that a report of condition has been properly filled out, both with regard to the items of "resources" and "liabilities" on its face and the schedules on the back, it is necessary to see that it is signed, sworn to, and attested as required by law. It must be signed either by the president or cashier, *as no other officer is empowered by section 5211 to do this*, and attested by three directors, as required by the same action. The officer signing the report, if a director, should not sign in attestation of his own signature, as it is hardly to be supposed that this was contemplated by the law; and finally the officer signing should swear to it before a notary public, or other officer having an official seal, and authorized to administer oaths, as required by the act approved February 26, 1881. As this act provides that the officer administering the oath should not be "an officer of the bank," the oath should not be administered by a director acting in that capacity, for the reason that in section 5497, enacted prior to the act of February 26, 1881, a director is evidently regarded as an *officer*, inasmuch as the following language is used: "Every presi-

dent, cashier, teller, director, or *other* officer of any bank or banking association."

How to Proceed in Absence of Three Directors, or of both President and Cashier.

Should it ever happen that the signatures of three attesting directors required by law can not be procured within five days after receipt of report blanks, or should it be impossible to obtain the signature of either the president or the cashier in time, through the absence or disability of both these officers, all that can be done is to make up a temporary report signed by some other officer, attested by the signatures of as many directors (not over three), as it is possible to obtain, and promptly forward this to the Comptroller within the five days allowed. In such cases, a letter explaining the circumstances should always accompany the report, and a complete report, made up in all respects as required by law, should be forwarded to him at the earliest possible day thereafter

Penalty for Delay in Forwarding Reports.

It will be observed that section 5213 prescribes a penalty of $100 a day for each day's delay beyond the period named for forwarding reports of condition,

and for this reason particular care should be taken to forward these reports to the Comptroller's office "within five days after the receipt of a request or requisition therefor from him;" that is, within five days after the date upon which the "call" and report blanks are received by the bank.

CHAPTER X.

MATTERS OF MANAGEMENT AND POLICY.

Overdrafts.

The practice of allowing customer's accounts to be overdrawn is one that pretty generally prevails in the banking business without reference to locality, and so long as a due regard to the *security* of such overdrafts is had, the policy of allowing them is not necessarily attended with danger. It is a privilege, however, that may very readily be abused by the customers of a bank, unless great care and prudence is exercised by its officers, and undue laxity on the part of one bank is very apt to induce its competitor to pursue a similar course through fear of losing business.

In certain portions of the country and at certain periods of the year—notably in the South and West—the rapid marketing of the great crops of cotton, wheat, corn, etc., creates conditions under which overdrafts are for a season practically un-

avoidable, and under such circumstances it is only necessary that the bank should look carefully to securing itself for these temporary loans, by warehouse or elevator receipts, or bills of lading, further protected by fire or marine insurance, in order to eliminate from the practice the chief elements of danger. Whenever it is practicable to do so, demand notes for the average amount of accommodation granted in this manner should be taken, and, of course, interest should always be charged for the use of money loaned in this way.

In reporting overdrafts in statements of condition to the Comptroller, the amount of same should not be deducted from "deposits" so as to decrease liabilities shown under this item in the report, but entered as an item of "resources." In classifying them in schedule on back of report, the "secured" should be separated from the "unsecured," and in stating amounts "standing" for certain periods of time named in the schedule, only overdrafts that have been continuously standing at fixed amounts for the periods named, without any change in the accounts in which they appear should be stated as "standing."

Renewing Paper by noting Payment of Interest on Same.

With some banks it is the custom to renew paper at maturity by simply noting or indorsing the payment of interest on it. The distance at which the customers of a bank live from it in some localities, the inconvenience they would undergo in coming personally to renew their notes at maturity, and other circumstances, make this course necessary in such cases, and sometimes desirable; but care should always be taken by the bank to see that no claim on any indorser or surety on the paper is forfeited by failure to give such indorser or surety proper and full notice, by protest or other means, of its non-payment at maturity, and this precaution should be always taken when paper becomes overdue, whether interest is paid at maturity or not.

In extending paper by payment of interest, a full memorandum should be noted on it, in ink, of the amount of interest paid, the date on which it is paid, and the period of time for which it is agreed to extend it, so that these data may show the basis of the new transaction.

Renewal of Discounted Commercial Paper.

It sometimes occurs that paper originally discounted by a bank as "commercial or business

paper" is, at maturity, renewed with the mutual consent of all parties concerned. Unless the conditions warranting the discount of such paper remain practically unchanged at time of renewal, it is a question whether it does not then become accommodation paper, and as a consequence subject to the restrictions applying to "money borrowed."

Borrowing Money on Certificates of Deposit.

By the very nature of the terms in which it is couched a certificate of deposit evidences that a deposit of money has been made with the bank issuing the certificate *prior* to its issue, and it would seem proper and good banking practice, therefore, to confine the use of these certificates to this legitimate function, and that they should not be used in the stead of promissory notes for borrowing money, especially in cases where the money is not actually received by the bank until *after* the certificate of deposit has been issued.

It may be well to note here that certificates of deposit—which after a customary form bear interest if the deposit remains for a certain stipulated period of time—are in effect *demand* certificates, for by waiving the claim to interest the holder of such a certificate may demand payment of the deposit at any time.

These should not be confounded with *time* certificates, under the terms of which the holder has no right to demand payment except at the expiration of the period of time named in the certificate.

CHAPTER XI.

DIGEST OF NATIONAL BANK CASES.

Commencing with the year 1875 each annual report of the Comptroller of the Currency has contained a digest of court decisions in cases concerning National banks, and this digest, which has carefully been revised and added to from time to time, has now grown to be a very valuable feature of these reports.

In it the salient points in each case are stated as briefly and concisely as possible, conveniently arranged for reference, under the following general heads, taken from the index of contents appearing on pages 87 and 88 of volume I, Comptroller's report for 1889:

1. Constitutional law; 2. Powers and liabilities of National banking associations; 3. Ultra vires; 4. Stock; 5. Shareholders; 6. Officers; 7. Interest; 8. Insolvent associations; 9. Receivers; 10. Taxation; 11. Jurisdiction; 12. Suits; 13. Evidence; 14. Crimes.

The decisions therein cited occupy twenty-five pages of the report (89 to 113 inclusive) and furnish a most reliable and convenient fund of infor-

mation to the bank officer or attorney in many questions presenting doubt or difficulty. A copy of the Comptroller's report is sent each year to every National bank, and one may be had free, upon application, by any one in need of the information it contains.

In addition to this digest just described, "A Digest of Recent Decisions in Banking Law" is also to be found in the 1888 report, on pages 127 to 138. This digest will be found to contain much valuable and interesting matter of a general nature, on the topics of "Banks and Banking," "Bank Officers," and "Business."

To the banker or bank attorney who desires a standard work, however, embracing the law and usage relating to the banking business in all its phases, the work of "Morse on Banks and Banking," third edition, by Parsons, can not be too highly recommended. It is full and complete on every branch of the subject, and is recognized everywhere as a standard authority.

CHAPTER XII.

THE PRESIDENT.

His Powers and Duties.

Section 5150 prescribes that "one of the directors, to be chosen by the board, shall be the president of the board," and, although the law does not in terms so prescribe, this director, in practice, is the president of the bank also.

In the index of the National-bank Act, edition of 1888, will be found reference to all portions of this act which specifically define what the president should do and should not do; and these statutory requirements apply also in nearly every particular to the cashier of a National bank.

Besides these statutory requirements, the by-laws of National banks, prescribed by the directors, generally make the president "responsible for all such sums of money and property of every kind as may be intrusted to his care or placed in his hands by the board of directors, or by the cashier, or otherwise come into his hands as president," and prescribe further that "all contracts, checks, drafts, etc., and all receipts for circulating notes received

from the Comptroller of the Currency shall be signed by the president or cashier."

In this connection it may be noted that the general form of by-laws for National banks usually provides as to the "conveyance of *real estate*," as follows:

> All transfers and conveyances shall be made by the bank and under the seal thereof, in accordance with the orders of the board, and shall be signed by the president or cashier.

From this, it is clear that neither the president nor the cashier is competent to transfer or convey *real estate*, which is the property of the bank, to any other party unless specially authorized to do so by order of the board of directors.

It is customary for the president to sign the minutes of all business meetings (which should also be attested by the cashier) and also (with the cashier) to sign all certificates of stock issued.

Beyond the duties here enumerated, and such others as may be specially delegated to him by the board, the authority of the president does not generally exceed that of any other director, although, as he usually receives a regular salary for his services, he is expected to devote more of his time to the supervision of the business of the bank.

The Vice-President—Powers and Duties.

As to the powers and duties of the *vice-president*, the articles of association usually prescribe that the board of directors "shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause, to perform all acts and duties pertaining to the office of president, except such as the president only is authorized by law to perform."

The signing of circulating notes is the only act that the vice-president is specially authorized by law to perform, and he is not therefore legally qualified to act in the place of the president in performing any other act prescribed by statutes for the president.

CHAPTER XIII.

THE CASHIER.

His Powers and Duties.

By long-established usage the cashier of a bank is regarded by all concerned as its chief *executive* officer, whose duty it is to see that the policy and plans formulated by the directors—who are the responsible managers—are properly carried into execution.

As the success and welfare of every banking institution necessarily depends in large measure upon the ability, integrity, and skill of its cashier, it is important that this officer should have a clear comprehension of the responsibilities devolving on him and the powers with which he is invested for the proper discharge of his duties.

Much of what is contained in this chapter will apply to the cashier of any commercial bank, but the duties of the cashier of a *National* bank, which are here specially considered, may properly be divided into two classes, as follows:

1. Those which are distinctly defined by the National-bank Act.

2. Those which are inherent in his office, whether prescribed by law or delegated to him by the directors, who appoint him; being such as by well-established usage he is expected to perform by virtue of his office.

As to the duties of the first class above named, reference to all of these may be found in the index of the National-bank Act, edition of 1888, on page 91. The duties which he is by law required to perform consist, chiefly, of the verification of various reports and certificates under oath, and the signing of circulating notes, and certain statutory restrictions also prohibit his performing acts which would be either dishonest or injurious to the interests of all concerned.

In this connection it is to be noted that wherever the statute specifically prescribes that an instrument is to be signed by the cashier or the president, no other officer of the bank is legally qualified to sign in the place of either of these officers.

Particular attention is directed to the requirement with regard to the *certification of checks*. Section 5208 makes it "unlawful for any officer, clerk or agent of any National banking association to certify any check drawn upon the association

unless the person or company drawing the check has on deposit with the association at the time such check is certified an amount of money equal to the amount specified in such check," and further prescribes that while "any check so certified by duly authorized officers shall be a good and valid obligation against the association," its certification by any officer, clerk, or agent would subject the *association* to the penalty of being placed in the hands of a receiver by the Comptroller.

Apparently to correct abuses in this respect, Section 13, act July 12, 1882, was afterwards enacted, which makes the officer, clerk, or agent wilfully *over*-certifying a check *personally* liable, on conviction, to severe penalties of fine and imprisonment. This section is more explicit in its terms than Section 5208, and prescribes penalties for any officer, clerk, or agent who shall wilfully violate Section 5208, "or who shall resort to any device, or receive any fictitious obligation, direct or collateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association."

The *second* class embraces a wide range of duties,

the chief of which perhaps are embodied in the following extracts from a general form for by-laws usually adopted by the directors of associations at time of organization, viz.:

Under the caption of "Officers" section 7 of this form prescribes that "the cashier * * * shall be responsible for all the moneys, funds, and valuables of the bank"; and under the caption "Contracts" section 21 prescribes that "all contracts, checks, drafts, etc., and all receipts for circulating notes received from the Comptroller of the Currency shall be signed by the (president or) cashier."

These practically commit to the cashier's safe keeping and control all the negotiable *personal* property of the bank and confer upon him certain included powers necessary to the proper discharge of the responsible functions of his office.

Such, for instance, are the giving of certificates of deposit, cashier's checks and other vouchers for money or valuables intrusted to the safe keeping of the bank; the certification of checks; the signing of checks and drafts for the purpose of transferring the funds of the bank from one place to another, or for paying its current expenses or other obligations; the buying and selling of exchange, coin and

bullion where this is a part of the bank's regular business. The cashier also has the power to indorse paper intrusted to the bank for collection, and upon receipt of money in payment of contracts to indorse and deliver paper and collateral security representing the same; but he has no inherent right to indorse non-negotiable paper, or to compromise a debt to the bank, or change the terms of an original contract without express authority from the board of directors. Of course he has no right in his official capacity to indorse his own individual paper.

In cases of emergency he may, for the purpose of meeting the obligations of the bank, rediscount negotiable paper or pledge negotiable securities in order to borrow money, and even execute a promissory note for this purpose; but he is not empowered to borrow money continuously and habitually for the purpose of providing additional capital in this way. As a rule, however, it is better that all borrowings by the bank should be made with the knowledge and under the express instructions of the board of directors.

It is within the power of the directors to limit these powers of the cashier; but in case he exercised them in spite of such restrictions his acts

would bind the bank to outside parties who were without notice of such limitations to powers ordinarily inherent in the cashier.

In this connection, the following extract from the decision of the U. S. Supreme Court in Merchants' Bank *vs.* State Bank (10 Wall., 649), defining in general terms the authority of the cashier, will be found valuable and interesting:

The question we are now considering is the authority of the cashier. It is his duty to receive all the funds which come into the bank, and to enter them upon its books. The authority to receive implies and carries with it authority to give certificates of deposit and other proper vouchers. Where the money is in the bank he has the same authority to certify a check to be good, charge the amount to the drawer, appropriate it to the payment of the check, and make the proper entry on the books of the bank. This he is authorized to do *virtute officii*. The power is inherent in the office.

The cashier is the executive officer, through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. A teller may be clothed with the power to certify checks, but this in itself would not affect the right of the cashier to do the same thing. The directors may limit his authority as they deem proper, but this would not affect those to whom the limitation was unknown.

As chief executive officer, the cashier ordinarily conducts the correspondence of the bank and supervises the subordinate officers and clerks in their duties of receiving and paying money and keeping the books and accounts. He also sees that proper notices of meetings are sent to shareholders and directors and that the necessary minutes of such meetings are properly recorded, to be afterwards signed by the president and attested by himself. It is customary, too, for the cashier (and the president) to sign all certificates of stock issued by the bank.

In conclusion, it may be said that while the cashier has no power to shape or direct the policy of the bank's business, it is his duty to see that all the details of such policy—not inconsistent with law—as the directors may adopt, are carried out with the utmost faithfulness, diligence, and skill.

CHAPTER XIV.

GENERAL REMARKS, IN CONCLUSION, REGARDING THE NATIONAL BANK SYSTEM.

In the preparation and compilation of this work certain conclusions have forced themselves upon the mind of the author, which he ventures to embody with the work, and to give for what they may be worth.

By requiring the maintenance of a "lawful-money" reserve upon deposits, imposing upon the banks restrictions in the matters of real estate transactions, and holding their own stock, and in failing to grant them the power to deal in stocks and bonds, it would appear that the framers of the law, in the light of past experience, aimed to create a banking system, the resources of which should, in convertibility and activity resemble the blood circulating through a healthy human body, and to prevent the clogging of its arteries and veins with impediments which tended to produce financial torpor, disease, and death. How wisely these lawmakers builded is attested by the existence to-day

of over 3,300 banks in active operation. The splendid success so far attained by National banks, as a whole, is the best evidence of the integrity and ability of those who have been charged with their management, and should stimulate officers of newly organized banks to emulate the fair dealing, prudence, and conscientious desire to act within the law, which, to a striking degree, characterize National-bank officers as a class.

In effect, the law has operated, as was intended, to make National banks distinctively banks of deposit and discount, and as such they have taken root, grown up, and flourished wherever the environment has been favorable to such growth. Whenever a National bank is organized or operated for the purpose of speculating in real estate, dealing in stocks and bonds, or for other illegal purposes, the promoters will sooner or later be compelled to yield unwilling compliance to the law, or to accept the alternative of voluntary or involuntary liquidation.

The great confidence reposed by the general public in National banks is based mainly upon the knowledge that they are held to a strict accountability to the law by means of intelligent and

thorough governmental supervision, and whenever a charter conferring this great advantage is accepted by the managers of a bank, they should also in good faith accept whatever apparent disadvantages are imposed by the law under which the charter is granted.

The circulation feature, which for a time when bonds were low in price and interest rates were high, was very profitable, and which must in time necessarily disappear on redemption of the bonds upon which this circulation is issued, has now become, to a great extent, a mere incident of the system, and where rates of interest are high—as in the West and South—operates to prevent its natural growth, because, under these circumstances, the enforced investment of capital in high-priced bonds inflicts actual loss of profit on the margin invested.

Various plans for removing this obstacle to the growth of the system have been proposed from time to time, but so far no action in this direction has been taken by Congress. It is more than probable, however, that a solution of the difficulty for the present, at least, will be found in the course recommended by the Comptroller, viz., a reduction in the minimum bond deposit limit fixed by the law as it now stands.